IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Girraj Prasad Meena

Vs.
State

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S.B. CRIMINAL MISC.PETITION NO.1593/2006

under Section 482 Cr.P.C.

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Date of Order:- August 22, 2006.

P R E S E N T

HON'BLE MR.JUSTICE HARBANS LAL

Mr. A.K. Gupta for the accused-petitioner.
Mr. Arun Sharma P.P. for the State.

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BY THE COURT:-

The instant petition under Section 482 Cr.P.C. is directed against the order dated 26/7/2006 passed by the learned Additional Chief Judicial Magistrate No.2, Bharatpur taking accused-petitioner in custody pursuant to the cognizance taken for offence u/S.376 I.P.C.

The relevant facts are that a complaint came to be lodged by Rajendra Prasad on 11/11/2005 before the aforesaid court which was forwarded u/S.156(3) Cr.P.C. to Police Station Mathura Gate, Bharatpur for investigation. The case of the

complainant was that the accused was his neighbour and used to come to his house. He used to give eatables to his daughter Kumari Priyanka who was below 13 years of age. He committed rape with her and threatened her with dire consequences. He committed her sexual exploitation for about 6 months. On 9/11/2005 when his daughter was all alone in the house, the accused came there. When he was committing rape with Kumari Priyanka he was caught red handed by the complainant and his wife. The police registered a case for offence u/S.376 IPC but after investigation filed the challan for offence u/S.354 IPC. The said offence being bailable, the police released the accused-petitioner on bail u/S.436 Cr.P.C. The trial court took cognizance vide its order dated 3/7/2006 for offence u/S.376 IPC without passing any order of cancellation of his bail. When the accused appeared before the court on 26/7/2006, he was taken into custody in connection with the offence u/S.376 IPC. The said order is under challenge in this petition.

His learned counsel has contended on the strength of **Sukhpal Vs. State of Rajasthan : 1988 (1) RLW 283, Moti Lal & Ors. Vs. State of Rajasthan : 1987 RCC 347 and Vijendra Kumar Vs. State of Rajasthan : 1988 Cr.L.R. (Raj.) 689** that

the order of the learned trial court taking the accused-petitioner into custody without passing order of cancellation of bail already granted to him is not only illegal and unsustainable but also clearly amounts to abuse of the process of the law. Learned Public Prosecutor also could not defend the order impugned.

It may be stated at the outset that the facts as indicated above are not in dispute. The accused-petitioner has been taken into custody without passing any order of cancellation of bail already granted to him by the police.

It has been held in the case of Sukhpal Vs. State of Raj. (supra) as under:-

> "I am, therefore, of the opinion that the legal position is beyond doubt that once an accused is ordered to be released on bail under any of the Section of Chapter XXXIII of the Cr.P.C. the police had no power to arrest him by merely adding another section which may be non-bailable. The police must seek an order from the Court for cancellation of bail granted to a person."

It has been held in Moti Lal and ors. Vs. State of Raj. (supra) as under:-

> “Once the person has been arrested on account of the allegations in the FIR, simply by adding a new section of non-bailable offence, it does not change the position, nor does it permit the police to re-arrest him.”

It has been held in Vijendra Kumar Vs. State of Raj. (supra) as under:-

> “Once an accused is released on bail in a particular case, then he cannot be arrested merely because another offence has been added to the list of the offences, which was graver than what was found earlier. **A bail once granted can be cancelled under Section 439(2) and 437(5) Cr.P.C.**”

It is well settled that the bail once granted to the accused cannot be cancelled except on the grounds laid down for cancellation of bail.

In this view of the matter, therefore, the order impugned cannot be sustained in law and deserves to be set-aside.

Consequently, this petition under Section 482 Cr.P.C. is allowed. The order dated 26/7/2006 passed by the learned Additional Chief Judicial Magistrate No.2, Bharatpur taking the accused-petitioner in custody is set-aside and it is directed that petitioner Girraj Prasad Meena S/o

Parsadi Lal Meena shall be released on bail on his furnishing a personal bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the learned trial court undertaking to appear before the court concerned unless otherwise directed.

(HARBANS LAL), J.

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